

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2278

NEVELS W. PITTMAN AND MARVIN A. MOORE

VERSUS

**WASHINGTON PARISH RESERVOIR DISTRICT
OF THE STATE OF LOUISIANA**

—
**On Appeal from the 22nd Judicial District Court
Parish of Washington, Louisiana
Docket No. 91,964, Division "B"
Honorable Elaine W. DiMiceli, Judge Presiding**
—

**Phil E. Miley
Mark D. Miley
Melissa A. Miley
Miley Law Firm
Baton Rouge, LA**

**Attorneys for
Plaintiffs-Appellants
Nevels W. Pittman and Marvin A. Moore**

**E. B. Dittmer II
Talley, Anthony, Hughes
& Knight, L.L.C.
Mandeville, LA**

**Attorney for
Defendant-Appellee
Washington Parish Reservoir District
of the State of Louisiana**

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered DEC 20 2006

Guidry, J. concurs in the result.

PARRO, J.

In this lawsuit concerning alleged violations by a public body of the open meetings law, the plaintiffs appeal a judgment dismissing their petition. For the following reasons, we affirm.

Factual and Procedural Background

The Washington Parish Reservoir District (the District) was created by 2003 La. Acts, No. 71, § 2, effective May 28, 2003, for the purpose of the creation and maintenance of reservoirs within the District for the development of the wealth and natural resources in Washington Parish. LSA-R.S. 38:3087.193.¹ The District was charged with finding land suitable for the proposed reservoir in Washington Parish. See LSA-R.S. 38:3087.192. The District's site selection would be submitted to the United States Army Corps of Engineers (the Corps) for studies and hearings to determine whether and where a reservoir should be constructed in Washington Parish. Denmon Engineering, a consulting firm, was hired by the District to review and analyze three potential sites for the reservoir and to recommend the best of the sites based on weighted factors. The District scheduled a meeting for January 5, 2005, for the purpose of receiving an engineering report pertaining to the proposed location for the reservoir. Discussion at the January 5, 2005 meeting was limited to the issue of site selection, as reported on by the engineering firm. Later, the Corps would hold public hearings at which the pros and cons of the project would be fully debated.

Prior to the meeting, a press release was issued and a notice was posted at the meeting place. One showed the address for the meeting place as the WEDF Office, 524 Georgia Avenue, Bogalusa, and the other showed it as the WEDF Building, 526 Georgia Avenue, Bogalusa. The notices simply disclosed that the purpose of the meeting was to receive and act upon an engineering recommendation. The day before the scheduled meeting, the local paper published an article about the meeting entitled "Reservoir report tomorrow—Meeting is to hear from engineers, not the public." In the article,

¹ The various statutory provisions regarding the District were amended by 2005 La. Acts, No. 307, §1, effective June 29, 2005. However, these amendments are not relevant to the conclusions reached in this opinion.

Huey Pierce, chairman of the board of commissioners (the commission) for the District, was quoted as saying: "I would invite anybody from the public to come and observe ... but it's not for public comment, not for public hearing." According to Mr. Pierce, the reporter had taken his statement out of context, in that she failed to relate these remarks to the issue that would later go before the Corps. The District meeting was being held solely for the purpose of receiving scientific, factual, and technical data to aid in selecting a site. Mr. Pierce noted that the reporter had correctly stated that the January 5, 2005 meeting would not be a public hearing at which the public would be allowed to voice their concerns about the construction of a reservoir, in that the District did not have jurisdiction to receive public comment on permitting issues. He indicated that the article inaccurately reported that no one would be allowed to comment at all at the meeting. His testimony to that effect was corroborated by the following two paragraphs of the article:

Upon the commission's action, information will be presented to the U.S. Army Corps of Engineers, who has the authority to conduct a public hearing. "They have the legal jurisdiction of receiving public comment on permitting issues," Pierce said. "Not this commission."

Pierce said if those considering participating in the meeting have "any other purpose in mind" than to allow the commission to complete its duties as an appointed commission, "I would ask them to reconsider."

A partial transcript of the January 5, 2005 meeting reflects that at the conclusion of the presentation of the engineer's report, the presenter, Terry Denmon, told Mr. Pierce that he would be glad to answer any questions. Thereafter, Mr. Pierce stated:

Thank you. Commissioners, do we have any questions? Do you have any questions of Mr. Denmon? Excuse me – commissioners do you have any questions of the presentation – Mr. Denmon? Anyone have any questions? Apparently there are no questions then the chair will entertain your actions.

Afterwards, the commission unanimously voted to accept the recommendation of the engineering firm to choose site two of the three evaluated sites.

Nevels W. Pittman and Marvin A. Moore (collectively, plaintiffs) filed suit against the District, seeking to have all votes and actions taken by the commission at its January 5, 2005 meeting declared void. The plaintiffs also sought attorney fees and

costs. During the trial of this matter, plaintiffs urged that the commission had violated various provisions of the open meetings law in the following respects:

- 1) existence of a discrepancy in street address listed in the notices,
- 2) failure to include a formal agenda for the proposed meeting in the notices,
- 3) failure to separately post a copy of open meetings laws, and
- 4) no opportunity for public comment.

Following a hearing, the trial court in oral reasons remarked that it would be silly for the District to post the open meetings law where such laws had already been posted by another public body at the District's domicile and found that the posting in the courthouse was adequate. The agenda requirement was found to mandate merely that the things to be discussed or deliberated at a meeting be disclosed in the notice. The trial court found that the content of the notice that was sent to the newspaper and posted at the meeting place clearly disclosed what was going to be deliberated by the commission at the meeting. As to the offer to accept public comment, the trial court found that the transcript of the meeting refuted the plaintiffs' argument that they were denied the opportunity to comment publicly. Having found that the commission complied with the open meetings law, the trial court dismissed the plaintiffs' demands.

The plaintiffs appealed, alleging that the trial court erred in failing to find that the commission (1) failed to give proper notice of the January 5, 2005 meeting, (2) violated LSA-R.S. 42:4.1(B) by failing to post a copy of the open meetings law, and (3) failed to allow an opportunity for public comment. In their appeal, the plaintiffs reassert their right to attorney fees and litigation costs under LSA-R.S. 42:11(C).

Discussion

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law. LSA-Const. art. XII, § 3. In connection with LSA-Const. art. XII, § 3, the legislature enacted the open meetings law, which is set forth in LSA-R.S. 42:4.1 through 13. Louisiana Revised Statute 42:4.1(A) declares:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

Toward this end, the provisions of R.S. 42:4.1 through 10 shall be construed liberally.

The primary purpose of the open meetings law and the constitutional provision ensuring the right of citizens to participate in the deliberations of public bodies is to protect citizens from secret decisions made without any opportunity for public input. The public has a right to know what is being considered and is entitled to direct participation in deliberations as styled by LSA-Const. art. XII, § 3. Wagner v. Beauregard Parish Police Jury, 525 So.2d 166, 169 (La. App. 3rd Cir. 1988); see Organization of United Taxpayers and Civic Associations of Southeast Baton Rouge, Inc. v. Louisiana Hous. Fin. Agency, 96-2406 (La. App. 1st Cir. 11/7/97), 703 So.2d 107, 110-11, writ denied, 97-3007 (La. 2/6/98), 709 So.2d 745.

A. Posting of the Open Meetings Law

To advance the policy behind the open meetings law, all public bodies shall post a copy of LSA-R.S. 42:4.1 through 13. LSA-R.S. 42:4.1(B). The District admittedly did not post a copy of this law prior to the meeting, because a copy of it had already been posted by another public body at the parish government complex,² which includes the parish courthouse. The District normally conducted meeting at the parish complex, but the subject meeting was held elsewhere. The plaintiffs urged that a copy of the law had to be posted at the meeting place, or in the alternative, by the District in the parish courthouse. We disagree. It would have been a vain and useless act to require the District to separately post a copy of the law at a location at which this law had been previously posted by a different public body. Furthermore, we do not find that LSA-R.S. 42:4.1(B) required that a copy of the law be posted at the separate meeting place. Accordingly, we find no error in the trial court's finding that the statutory requirements of LSA-R.S. 42:4.1(B) were satisfied.

² While the District had no formal office, pursuant to permission that had been granted by the parish government, the commissioners generally conducted meetings in the parish government complex.

B. Inclusion of Agenda in Public Notice

Not only are meetings of public bodies to be open, but, with some limited exceptions, citizens have the right to know, in advance, the subject matter upon which governing bodies will deliberate and vote. Louisiana Revised Statute 42:7(A)(1) provides:

(a) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings.

(b)(i) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours before the meeting.

(ii) Such notice shall include the agenda, date, time, and place of the meeting, provided that upon approval of two-thirds of the members present at a meeting of a public body, the public body may take up a matter not on the agenda.

Louisiana Revised Statute 42:7(A)(1)(b)(ii) requires written public notice including the agenda, date, time, and place of the meeting. The agenda must be reasonably clear so as to advise the public in general terms of each subject to be discussed.³ In this case, the notice provided that the meeting was being conducted by the commission to receive and act on an engineering recommendation.⁴ The plaintiffs asserted that the stated purpose in the notice did not advise of the actual purpose of the meeting, which was to approve a specific site for the location of a reservoir.

The trial court found the wording of the press release and posted meeting notice gave proper notice to the public of the substance of the meeting. Clearly, the large attendance at the meeting indicates that the public was aware of the substance of the agenda. Residents had been waiting to see if their homes would be spared by the

³ See La. Atty. Gen. Op. No. 93-230 (1993).

⁴ The full meeting agenda was as follows:

1. Call meeting to Order
2. Roll Call
3. Remarks by Chairman
4. Invocation
5. Receive engineering presentation and act on the recommendation.
6. Adjournment

engineering firm's recommendation and the commission's selection of the site for the proposed reservoir. Mr. Pittman actually attended the meeting. However, Mr. Moore, who was also interested in knowing whether the proposed reservoir would be located in his vicinity, opted not to attend based on the newspaper article's implication that he would not be able to participate in the meeting. Neither gentleman asserted that the notice was unreasonable or that it deprived him of his right to know what was being considered. The plaintiffs in this case were aware that the commission would be receiving the engineering firm's report concerning three proposed sites and considering and voting on the firm's recommendation as to the favored location. See Shirley v. Beauregard Parish School Board, 615 So.2d 17, 20 (La. App. 3rd Cir. 1993). Accordingly, the notice did not violate the open meetings law in this respect.

C. Opportunity for Public Comment

With the exception of school boards, each public body conducting a meeting subject to the notice requirements of LSA-R.S. 42:7(A) shall provide an opportunity for public comment at such meeting, subject to reasonable rules, regulations, and restrictions as adopted by the public body. LSA-R.S. 42:5(D). Various people who were at the meeting testified that the public was not given an opportunity for public comment, in violation of LSA-R.S. 42:5(D). Mr. Pierce denied ever having said that the public would not be allowed to speak on the subject matter at hand in the meeting. The transcript shows that following the presentation of the engineering report, Mr. Pierce asked the commissioners if they had any questions and then asked if "[a]nyone" had any questions. Furthermore, at no time during the meeting was any member of the public denied the opportunity to ask a question or make a comment. Based on Mr. Pierce's asking if anyone had any questions after having given the commissioners an opportunity to question the presenter of the report, the trial court found that the requirements of LSA-R.S. 42:5(D) were satisfied. After reviewing the record, we find no manifest error in the trial court's finding that the public was afforded the opportunity to

comment concerning the engineering firm's recommendation of site two for the location of the proposed reservoir.⁵

Decree

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed to Nevels W. Pittman and Marvin A. Moore.

AFFIRMED.

⁵ Accordingly, we find no merit to the plaintiffs' claim for attorney fees and litigation costs under LSA-R.S. 42:11(C). We note further that during the permitting phase, the residents will have ample opportunity to provide public input to the Corps as to the pros and cons of the proposed reservoir.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2278

NEVELS W. PITTMAN AND MARVIN A. MOORE

VERSUS

WASHINGTON PARISH RESERVOIR DISTRICT
OF THE STATE OF LOUISIANA

McCLENDON, J., agrees, and assigns additional reasons.



I agree with the opinion, and respectfully assign additional reasons. Although an appellate court may have made different evaluations and inferences, credibility determinations are subject to a manifest or clear error standard of review. **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). In the absence of clear error by the trial court in its credibility decisions, I find no basis for reversal.